

RANDY P. DAVENPORT, ESQ., (RD-7060)  
Attorney-At-Law  
50 Park Place, Suite 825  
Newark, New Jersey 07102  
(973) 623-5551 \* Fax (973) 623-6868  
Attorney for Plaintiff, Kevin Francis  
rpdavenport@aol.com

KEVIN FRANCIS, through his	:	UNITED STATES DISTRICT COURT
guardian ad litem, Tamika Francis,	:	DISTRICT OF NEW JERSEY
	:	
	:	
Plaintiff(s)	:	Honorable Faith S. Hochberg,
	:	J.U.S.D.C.
	:	
v.	:	Civ. Action No: 09-3449(FSH)
	:	
	:	
CITY OF NEWARK, ANTONIO	:	
TAVARES, individually and in his	:	
official capacity, ANTHONY MATOS	:	
individually and in his official	:	
capacity,	:	
ADOLPH VAZQUEZ, individually and	:	
in his official capacity, DARRIN	:	
MARASCO, individually and in his	:	
official capacity, JOHN DOES, 1	:	
through 10, individually and in	:	
their official capacity and ROBERT	:	
DOES, 1 through 10, individually	:	
and in their official capacity.	:	
	:	
Defendant(s)	:	

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**BRIEF IN OPPOSITION TO DEFENDANTS' CITY OF NEWARK AND DARRIN  
MARASCO'S MOTION FOR SUMMARY JUDGMENT**

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RANDY P. DAVENPORT, ESQ.  
Attorney-At-Law  
Robert Treat Center  
50 Park Place, Suite 825  
Newark, New Jersey 07102  
Tel. (973) 623-5551  
Fax (973) 623-6868

**PLAINTIFF'S RESPONSIVE STATEMENT OF MATERIAL FACTS**

1. Agree
2. Disagree
3. Agree
4. Agree
5. Disagree. Plaintiff agrees that the tee-shirt Plaintiff was wearing was provided to Defendant Marasco for DNA analysis to determine if urine or its by products were on the tee-shirt. However, Plaintiff has no way of knowing if the tee-shirt he provided was presented for DNA analysis.
6. Agree
7. Agree
8. Agree
9. Agree
10. Disagree
11. Agree
12. Agree
13. Agree

**SUPPLEMENTAL STATEMENT OF DISPUTED FACTS**

1. Plaintiff is African-American and was 13 years of age on the date of the incident.
2. Plaintiff was grabbed by his arm and put in the patrol vehicle by Officers Matos and Tavares. Plaintiff's deposition transcript at page 40 lines 1 through 9.<sup>1</sup> He was driven around. During the drive the officers tried to

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<sup>1</sup> Plaintiff Kevin Francis' deposition transcript is attached to the Declaration of Avion Benjamin in Support of Defendants' Motion for Summary Judgment.

make Plaintiff admit to a crime that he did not commit by telling him that if he did not they were going to take him to the park and beat him up. Plaintiff's deposition transcript at page 38 lines 1 through 18.

3. The officers scared Plaintiff so bad that he falsely admitted to trying to steal a car. Plaintiff's deposition transcript at page 37 lines 1 through 38 to page 38 line 18; page 40 lines 14 through 23.
4. While driving Plaintiff around the officers told Plaintiff they were going to throw him off of a bridge. Plaintiff was scared and told the officers he did not know how to swim. Plaintiff's deposition transcript at page 41 lines 17 through 22.
5. The officer took Plaintiff to a desolate area and told him to urinate on himself. Plaintiff's deposition transcript at page 45 lines 7 through 22.
6. When Plaintiff refused to urinate on himself, the officers started assaulted him with their hands and a night stick. Plaintiff's deposition transcript at page 45 line 21 through page 46 line 12.

7. After the officers physically assaulted Plaintiff by holding, punching and hitting him, Plaintiff fell to the ground. Plaintiff's deposition transcript at page 47 lines 2 through 14.
8. While lying on his stomach, Plaintiff heard an officer unzip his pants. Plaintiff's deposition transcript at page 48 lines 15 through page 49 line 8.
9. The officers then urinated on Plaintiff. Plaintiff could feel and smell the urine as he lay there. Plaintiff's deposition transcript at page 47 lines 20 through 21; page 48 lines 12 through 19.
10. Plaintiff testified that the Officer urinated on Plaintiff's neck "and stuff." Plaintiff's deposition transcript at page 48 lines 7 through 9.
11. Officer Marasco did not take care to itemize the brand name of the tee-shirt that Plaintiff provided to him for DNA analysis. Defendant Marasco's deposition transcript at page 35 line 24 through page 37 line 16.<sup>2</sup>
12. Plaintiff submits that there is no way of knowing if the tee-shirt that the Officer Marasco provided is even the tee-shirt that Plaintiff gave to Officer Marasco.

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<sup>2</sup> The deposition transcript of Darrin Marasco is attached as Exhibit C to the Declaration of Randy P. Davenport, Esq., in opposition to Defendants' Motion for Summary Judgment.

13. Defendant Marasco previously served as Defendant Anthony Matos' supervisor. In spite of this prior relationship with Matos, Marasco still conducted the internal affairs investigation into this matter rather than have it reassigned to an independent officer. Defendant Marasco's deposition transcript at page 59 lines 13 through 24.
14. Plaintiff's attorney requested that the tee-shirt be returned to him by certified letter/return receipt requested dated April 11, 2008. See Exhibit A to Declaration of Randy P. Davenport, Esq., in opposition to Defendant's Motion for Summary Judgment.
15. Although Defendant Marasco claimed he assumed Plaintiff's attorney picked up the tee-shirt, Marasco had no independent recollection of the tee-shirt being picked up and no signed receipt indicating that the tee-shirt was picked up. Deposition transcript of Defendant Darrin Marasco at page 14 lines 21 through 23; page 16 lines 16 through page 17 line 16.
16. The tee-shirt was never returned to Plaintiff's attorney. Deposition transcript of Defendant Darrin Marasco at page 16 line 9 through 15.

17. Darrin Marasco claims to not know what happened to the tee-shirt. Deposition transcript of Defendant Darrin Marasco at page 14 lines 7 through 8.
18. Darrin Marasco indicated that under the circumstances involved in this case, it would have been no reason for the officers to employ physical force against the Plaintiff. Deposition transcript of Defendant Darrin Marasco at page 49 lines 23 through page 50 line 7.
19. Darrin Marasco indicated that under no circumstances would it have been appropriate for the officer to urinate on Plaintiff. Deposition transcript of Defendant Darrin Marasco at page 50 lines 8 through 15.

LEGAL ARGUMENT

POINT I

THE COURT MUST DENY DEFENDANT'S MOTION FOR SUMMARY JUDGMENT BECAUSE THE QUALIFIED IMMUNITY PROVISION OF THE NEW JERSEY TORT CLAIMS ACT ARE IN APPLICABLE TO THIS MATTER INASMUCH AS THE DEFENDANTS ENGAGED IN ACTS OF ACTUAL MALIC, WILLFULL MISCONDUCT AND/OR RECKLESSNESS.

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) (quoting Fed.R.Civ.P. 56(c)). In deciding a motion for summary judgment, the Court must construe the facts and inferences in a light most favorable to the non-moving party. Pollock v. Am. Tel. & Tel. Long Lines, 794 F.2d 860, 864 (3d Cir.1986).

Plaintiffs are generally barred under the New Jersey Tort Claims Act (TCA), from receiving damages for injury against public entities or public employees unless there is a "permanent loss of a bodily function permanent injury disfigurement or dismemberment where the medical treatment expenses are in excess of \$3,600.00". See N.J.S.A.59:9-2(d). It is equally clear, however, that the immunity provision of N.J.S.A.59:9-2(d) are inapplicable "if it is established that the conduct was outside

the scope of his employment or constituted...actual fraud, actual malice or willful misconduct."

Immunity extends to public employees who "act[] in good faith in the execution or enforcement of any law." N.J.S.A.59-3-3. It has been noted that in order to receive the immunity protections of the TCA, public employees must "establish that their acts were objectively reasonable or that they performed them with subjective good faith." Canico v. Hurtado, 144 NJ 361, 365 (1996).

While Defendant City of Newark asserts that Plaintiff has not satisfied the verbal threshold requirements of the TCA, the New Jersey Supreme has explained that defendants who engage in reckless conduct can not avail themselves to qualified immunity based upon the verbal threshold. See Leang v. Jersey City Board of Education, 198 N.J. 557 (2009). The Leang Court explained that:

We begin our analysis with an examination of the TCA provisions that strip away immunity for acts of willful misconduct. As we have held, "[b]y its plain, unambiguous, and specific terms, N.J.S.A. 59:3-14(a) [the actual fraud, actual malice or willful misconduct provision] creates an exception to the verbal threshold," Toto v. Ensuar, 196 N.J. 134, 145, 952 A.2d 463 (2008); see also Velez v. City of Jersey City, 180 N.J. 284, 291, 850 A.2d 1238 (2004) (explaining that "[i]t is the intent of [N.J.S.A. 59:3-14(a)] that a public employee guilty of outrageous conduct cannot avail himself of the limitations as to liability and damages contained in [the TCA]" (citation omitted)).



[8][9] The traditional formulation of willful misconduct has required "a showing that there has been a deliberate act or omission with knowledge of a high degree of probability of harm and reckless indifference to consequences." Berg v. Reaction Motors Div., Thiokol Chem. Corp., 37 N.J. 396, 414, 181 A.2d 487 (1962). In some contexts, we have described it as conduct that falls "between simple negligence and the intentional infliction of harm," Fielder v. Stonack, 141 N.J. 101, 123, 661 A.2d 231 (1995) (citation omitted), cautioning that "there must be some knowledge that the act is wrongful," id. at 124, 661 A.2d 231.

[Leang, supra, at 583-584]. The Leang Court further explained that the TCA, by its own terms, excludes false arrest and false imprisonment claiming entirely from its grant of immunity.

Leang at 582. The Leang court also stated:

Moreover, the TCA specifically provides that there will be no immunity for a public employee if the conduct complained of constituted actual fraud, actual malice, or willful misconduct. N.J.S.A. 59:3-14(a) ("Nothing in this act shall exonerate a public employee from liability if it is established that his conduct was outside the scope of his employment or constituted ... actual fraud, actual malice or willful misconduct.").

[Leang, supra, at 582-83].

When applying the above-referenced principles to the instant matter it becomes patently obvious that summary judgment is inappropriate. Plaintiff, who was thirteen years old at the

time of the incident, contends that he was walking in the city of Newark and was picked up by officers Antonio Tavares and Anthony Matos and put into their patrol vehicle. He was driven around in a patrol car by the officers. He was taken out of the patrol vehicle, whereupon he was physically assaulted and urinated on by officers Matos and Tavares. He then was left in a desolate area near the Essex County Jail. The officers also tried to make Plaintiff admit to crimes he did not commit and threatened to throw Plaintiff off a bridge.

If Plaintiff's version of the facts is believed, under no circumstances can it be found that the officers were acting objectively reasonable or that their acts were performed with subjective good faith. The officers' conduct without doubt falls into the categories of actual malice, willful misconduct or recklessness, classifications for which there is no qualified immunity. See N.J.S.A.59:3-14a.

Certainly there is a genuine issue of material fact as the Plaintiff contends that he was threatened, assaulted, illegally detained and urinated on by the officers. The Officers, on the other hand, contend that they committed no such acts. Accordingly, Summary Judgment should be denied with respect to Plaintiff's state tort causes of action for intentional infliction of emotional distress and assault and battery, inasmuch as they constitute acts of actual malice, willful misconduct and/or recklessness. Moreover, the New Jersey Supreme Court in Canico, supra, has explained that claims for

false arrest/imprisonment are not barred by the immunity provisions of the TCA.

POINT II

DEFENDANT DARRIN MARASCO'S MOTION FOR  
SUMMARY JUDGMENT SHOULD BE DENIED  
INASMUCH AS THERE IS A GENUINE ISSUE OF  
MATERIAL FACT AS TO WHETHER PLAINTIFF  
HAS ESTABLISHED A CIVIL CONSPIRACY.

The Court must deny Defendant Marasco's Motion for Summary Judgment because Plaintiff has established a genuine issue of material fact as to whether Defendant Marasco engaged in a civil conspiracy.

In order to prevail in a § 1985 conspiracy case Plaintiff must show that the defendants were "motivated by a class-based invidiously discriminatory animus," and that defendants "conspired to deprive Plaintiff of the equal protection rights of the laws or of equal privileges and immunities under the laws." Pomykacz v. Borough of West Wildwood, 438 F. Supp. 2d 504, 513 (D.N.J. 2006) citing Bougher v. University of Pittsburgh, 882 F.2d 74, 79 (3d Cir. 1989); see also Farber v. City of Paterson, 440 F.3d 131, 135 (3d Cir. 2006); Griffin v. Breckinridge, 403 U.S. 88, 102, 91 S. Ct. 1790, 29 L. Ed. 2d 338 (A71).

Plaintiff, an African-American male, has established the elements necessary to proceed with his civil conspiracy claim against Defendant Darrin Marasco. Officer Marasco admitted that he was defendant Matos' sergeant when Matos was a patrolman.

Defendant Marasco's deposition transcript at page 59 lines 13 through 24. Hence the two had a previous relationship which formed a basis for Matos and Marasco to engage in a conspiracy to destroy the tee-shirt. Additionally, in spite of their prior working relationship, Marasco opted to lead the Internal Affairs Investigation into this matter rather than to have the case re-assigned. The tee-shirt was provided to Marasco to have DNA analysis conducted. It is unknown whether the tee-shirt that was provided to Marasco was the shirt that was submitted to the State laboratory for testing. Plaintiff maintains that Marasco may have switched tee-shirts and not given the proper tee-shirt to the State lab. In any event, Plaintiff was deprived of the opportunity to have the tee-shirt tested by his own expert. The laboratory report itself indicates that the specimen was not processed for trace evidence and that the lab should be contacted regarding the necessity for any trace evidence analysis. See Exhibit B to Declaration of Randy P. Davenport, Esq., in Opposition to Defendant's Motion for Summary Judgment. Defendant Marasco never requested that trace analysis be performed and by destroying the tee-shirt, he prevented Plaintiff from doing so.

Under the above scenario, Plaintiff has established a material issue of genuine fact warranting denial of Defendant Marasco's Motion for Summary Judgment. This is clearly so inasmuch as Summary Judgment is frowned upon in conspiracy cases. See Paton v. LaPrade, 471 F. Supp. 166, 171 (DNJ 1979)

citing Adickes v. S.H. Kress & Co. 398 US 144, 176 1970 (Justice Black, concurring).

**CONCLUSION**

For the foregoing, Defendants' Motion for Summary Judgment dismissing Plaintiff's state causes of actions and civil conspiracy claims should be denied.

Respectfully submitted,

RANDY P. DAVENPORT /S/  
RANDY P. DAVENPORT, ESQ.

RANDY P. DAVENPORT, ESQ. (RD-7060)  
Attorney-At-Law  
50 Park Place, Suite 825  
Newark, New Jersey 07102  
(973) 623-5551 \* Fax (973) 623-6868  
Attorney for Plaintiff, Kevin Francis  
rpdavenport@aol.com

KEVIN FRANCIS, through his : UNITED STATES DISTRICT COURT  
guardian ad litem, Tamika Francis, : DISTRICT OF NEW JERSEY

Plaintiff(s)

v.

:  
:  
:  
: Honorable Faith S. Hochberg,  
: J.U.S.D.C.  
: Civ. Action No: 09-3449 (FSH)

CITY OF NEWARK, ANTONIO :  
TAVARES, individually and in his :  
official capacity, ANTHONY MATOS :  
individually and in his official :  
capacity, :  
ADOLPH VAZQUEZ, individually and :  
in his official capacity, DARRIN :  
MARASCO, individually and in his :  
official capacity, JOHN DOES, 1 :  
through 10, individually and in :  
their official capacity and ROBERT :  
DOES, 1 through 10, individually :  
and in their official capacity. :

Defendant(s)

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**DECLARATION OF RANDY P. DAVENPORT, ESQ., IN OPPOSITION TO DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

---

RANDY P. DAVENPORT, ESQ.  
Attorney-At-Law  
Robert Treat Center  
50 Park Place, Suite 825  
Newark, New Jersey 07102  
Tel. (973) 623-5551  
Fax (973) 623-6868

I, Randy P. Davenport, Esq., under penalty, declare as follows:

1. I am an attorney licensed to practice law in the State of New Jersey and in the District Court of New Jersey.
2. I represent Plaintiff in the captioned matter.
3. I am familiar with the facts of this action and make this Declaration in Opposition to Defendants' Motion for Summary Judgment pursuant to Fed. R.Civ.P.56.
4. Attached hereto as Exhibit A is a true, accurate, and complete copy of a letter dated April 11, 2008 from Randy P. Davenport, Esq., to the attention of Lt. Darrin Marasco of the Newark Police Department.
5. Attached hereto as Exhibit B is a true, accurate, and complete copy of a lab report dated November 5, 2007.
6. Attached hereto as Exhibit C is a true, accurate, and complete copy of the deposition transcript of Lt. Darrin Marasco dated August 11, 2010.
7. I hereby declare and affirm that to the best of my knowledge the foregoing statements are true. I am aware, that if any of the foregoing statements are knowingly false, I am subject to punishment. Executed under penalty of perjury this 22<sup>nd</sup> day of November 2010.

Respectfully submitted,

RANDY P. DAVENPORT /s/  
RANDY P. DAVENPORT, ESQ.

## **EXHIBIT A**



Copy



**RANDY P. DAVENPORT, ESQ.**

Attorney-At-Law

Robert Treat Center

50 Park Place, Suite 1400

Newark, New Jersey 07102

Tel. (973) 623-5551 Fax (973) 623-6868

Randy P. Davenport

April 11, 2008

Via Certified Mail/RRR

Office of Internal Affairs

Newark Police Department

22 Franklin Street

Newark, New Jersey 07102

Attn: Lieutenant Darrin Marasco

**RE: Investigation of Personnel # 2007-613**

Dear Lt. Marasco:

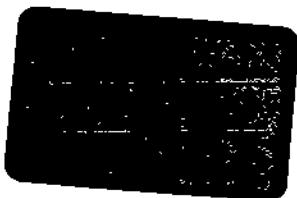
As you know, I represent the interests of Kevin Frances with regard to the above-referenced matter. I am in receipt of your correspondence dated January 23, 2008 addressed to my client Kevin Frances. Kindly return to the undersigned the clothing that was provided for DNA analysis.

I thank you for your prompt attention in this matter.

Very truly yours,

  
RANDY P. DAVENPORT, ESQ.

RPD/vat



## **EXHIBIT B**



NEW JERSEY STATE POLICE  
OFFICE OF FORENSIC SCIENCES

CRIMINALISTICS LABORATORY REPORT

Central Regional  
Laboratory

11/08/07  
Laboratory No.

E07-03781

Submitting Agency

Agency No.

Newark PD –  
Sexual Assault  
Unit

07-62014

Case: Kevin Francis (V)  
Unknown Unknown (S)

Found Item

Date of Report

11/05/07

Evidence in this case was submitted to the Office of Forensic Sciences for examination.  
See attached *Evidence Receipt* for list of items.

Results of Forensic Serology Examinations:

Page 1 of 2

No metabolic waste products excreted in urine were detected in the stain(s) on specimen 1.

This case was not processed for trace evidence. Please contact the laboratory regarding the necessity for any trace evidence analysis.

*Cortney MacDonald*

Cortney MacDonald  
Forensic Scientist I



*ATL*

# CRIMINALISTICS LABORATORY REPORT

Laboratory No.  
E07-03781

Agency No. 07-62014

### Found Item

**Date of Report**  
11/05/07

### Results of Forensic Serology Examinations:

Page 2 of 2

+/-	Positive / Negative
NE	Not Examined
NEV	Nothing of Evidential Value
NFE	No Further Examination
INC	Inconclusive
QNS	Quantity of stain insufficient for analysis
ND	Not Detected

*Cortney MacDonald*  
Cortney MacDonald  
Forensic Scientist I

~~RI~~

## **EXHIBIT C**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CIVIL ACTION NO. 09-3449 (FSH)

KEVIN FRANCIS, through  
his guardian ad litem,  
TAMIKA FRANCIS,

Plaintiffs,

DEPOSITION UPON  
ORAL EXAMINATION  
OF  
LT. DARRIN MARASCO

-v-

CITY OF NEWARK, ANTONIO  
TAVARES, individually and  
in his official capacity,  
ANTHONY MATOS, individually  
and in his official capacity,  
ADOLPH VAZQUEZ, individually  
and in his official capacity,  
DARRIN MARASCO, individually  
and in his official capacity,  
JOHN DOES 1 through 10,  
individually and in their  
official capacity, ROBERT  
DOES 1 through 10,  
individually and in their  
official capacity,

Defendants.

COPY

TRANSCRIPT of the deposition of the  
above-named witness, called for Oral Examination in the  
above-entitled matter, said deposition being taken by  
and before STEPHANIE LYN RAHN, a Certified Shorthand  
Reporter, License No. XI01717, and Notary Public  
of the State of New Jersey, at the CITY HALL, 920 Broad  
Street, Newark, New Jersey, 07102 on Wednesday, August  
11, 2010, commencing at 10:00 in the forenoon.

DepoLink  
Court Reporting & Litigation Support Services  
Phone (973) 353-9880 Fax (973) 353-9445  
[www.depolinklegal.com](http://www.depolinklegal.com)

Page 2	Page 4
<p>1 2 3 APPEARANCES: 4 5 CITY HALL 6 Department of Law 7 920 Broad Street, Room 316 8 Newark, New Jersey 07102 9 BY: AVION BENJAMIN, ESQ. 10 Attorney for Defendants City of Newark 11 and Lt. Darrin Marasco 12 13 RICCI FAVA, LLC 14 300 Lackawanna Avenue, Suite 5 15 West Paterson, New Jersey 07424 16 BY: BROOKE BAGLEY, ESQ. 17 Attorney for Defendant Officer Anthony Matos 18 19 RANDY P. DAVENPORT, ESQ. 20 The Robert Treat Center 21 50 Park Place, Suite 825 22 Newark, NJ 07102 23 Attorney for Plaintiffs 24 25</p>	<p>1 2 3 LIEUTENANT DARRIN MARASCO, 4 doing business at 22 Frankin Street, Newark, New Jersey, 5 having been duly sworn by the Notary, testified as 6 follows: 7 8 DIRECT EXAMINATION BY MR. DAVENPORT: 9 10 Q Good morning. What is your 11 rank? 12 A Lieutenant. 13 Q Good morning, Lieutenant. I am 14 Randy Davenport. I represent the plaintiff in 15 this matter Kevin Francis. I will start out by 16 giving you some very brief instructions. 17 You know you are here to have 18 your deposition taken. I presume you know you 19 have been named as a defendant in this case. The 20 purpose of today's proceedings is just to ask you 21 questions and find out what you know about this 22 case. 23 The primary area of questions 24 for you will be the T-shirt, basically what 25 happened to the T-shirt and what did you do, what</p>
Page 3	Page 5
<p>1 2 INDEX 3 WITNESS DIRECT CROSS REDIRECT RECROSS 4 LT. DARRIN MARASCO 5 6 BY: MR. DAVENPORT 4 63 7 BY: MS. BENJAMIN 62 8 9 10 EXHIBITS 11 12 NUMBER DESCRIPTION PAGE 13 P-1 Letter dated April 11, 2008 18 14 P-2 Report dated January 3, 2008 23 15 P-3 Report dated January 3, 2008 26 16 P-4 Lab Report, two pages 32 17 P-5 Property Form dated 18 July 24, 2007 36 19 P-6 Letter dated January 3, 2008 39 20 P-7 Motor Patrol Log 40 21 P-8 Tour Assignment Report 44 22 P-9 Event Chronology 45 23 P-10 Memorandum dated June 19, 2003 53 24 P-11 Letter dated December 4, 2007 56 25 P-12 Evidence Receipt dated July 24, 2007 57</p>	<p>1 was your role with regard to the T-shirt and what 2 were your expectations with regard to the 3 T-shirt, and there will be some other questions 4 as well. 5 There is nothing here designed 6 to trick you, fool you or anything to that 7 effect, I am merely trying to find out what 8 happened. I would ask during the course of these 9 proceedings, you allow me to ask my full question 10 before you begin to answer the question, and 11 likewise, I will try to let you get your answers 12 out before I proceed with another question. As 13 you know, we have a court reporter here, she's 14 taking everything down, and she can't take us 15 down effectively if we are speaking at the same 16 time. Okay? 17 A Yes. 18 Q Do you have any -- and if there 19 are any objections posed, by your counsel or the 20 other counsel, your counsel will instruct you 21 whether to answer the questions or not. If she 22 does object, don't answer the question, let Ms. 23 Benjamin say what she has to say on the record 24 and you will be directed whether or not to answer 25 the question. Alright?</p>

Page 6	Page 8
<p>1 A Yes.</p> <p>2 Q Alright, so you know this case</p> <p>3 is concerning the investigation of Kevin Francis.</p> <p>4 Correct?</p> <p>5 A Yes.</p> <p>6 Q Now, before we get to that, I</p> <p>7 just want some background information on you</p> <p>8 concerning your tenure as a law enforcement</p> <p>9 officer. Can you begin by giving me an</p> <p>10 indication of when you first went to the police</p> <p>11 academy. I assume you did, and basically what</p> <p>12 has been the course of your employment from that</p> <p>13 time, how long you have been on the force and</p> <p>14 things of that nature.</p> <p>15 A I am in my 16th year of service</p> <p>16 of the Newark Police Department. I started in</p> <p>17 February of 1995 in the police academy, graduated</p> <p>18 in July of the same year. I was assigned various</p> <p>19 patrol duties.</p> <p>20 Q What year was that?</p> <p>21 A 1995 I started. First promotion</p> <p>22 was in 2000, rank of sergeant, second promotion</p> <p>23 was 2005 to the rank of lieutenant. As far as</p> <p>24 method of service, it's been patrol, motorcycle,</p> <p>25 internal affairs, criminal investigation</p>	<p>1 Q The entire time?</p> <p>2 A Motorcycle and Internal Affairs.</p> <p>3 Q So you were a sergeant in</p> <p>4 Internal Affairs for awhile?</p> <p>5 A Yes.</p> <p>6 Q When did you become a sergeant</p> <p>7 in Internal Affairs?</p> <p>8 A Around 2002 I think, 2004,</p> <p>9 between that time, just a year.</p> <p>10 Q What happened after that, after</p> <p>11 that year, did you stay in Internal Affairs that</p> <p>12 entire time, from 2002 until you left?</p> <p>13 A No, it was a year tour. It was</p> <p>14 2004 I left when I got promoted to lieutenant in</p> <p>15 2005, and then I was assigned I believe to the</p> <p>16 Fifth Precinct in patrol. No, no, Safe City Task</p> <p>17 Force.</p> <p>18 Q And ultimately you ended up back</p> <p>19 in Internal Affairs?</p> <p>20 A Yes.</p> <p>21 Q When did that take place?</p> <p>22 A I think it was 2006.</p> <p>23 Q 2006. When you went to Internal</p> <p>24 Affairs in 2006, what position did you go in as?</p> <p>25 A Investigator.</p>
Page 7	Page 9
<p>1 division, pretty much everybody.</p> <p>2 Q Where are you now?</p> <p>3 A Criminal Investigations Bureau.</p> <p>4 Q What does that involve, Criminal</p> <p>5 Investigations Bureau?</p> <p>6 A The investigative functions of</p> <p>7 the police department, department-wide, all the</p> <p>8 detectives.</p> <p>9 Q You are a lieutenant now still?</p> <p>10 A Yes.</p> <p>11 Q And you supervise detectives, is</p> <p>12 that what you do?</p> <p>13 A No, actually I am administrative</p> <p>14 now, I work for Chief of Detectives Headquarters.</p> <p>15 Q You indicated in 1995 you</p> <p>16 started and at that time I guess you were patrol,</p> <p>17 patrolman?</p> <p>18 A Police officer once you graduate</p> <p>19 the academy.</p> <p>20 Q And you were in that rank until</p> <p>21 2000 when you became a sergeant?</p> <p>22 A Correct.</p> <p>23 Q When you became a sergeant, what</p> <p>24 unit were you employed in?</p> <p>25 A Patrol.</p>	<p>1 Q Now, you indicated you were a</p> <p>2 sergeant in Internal Affairs prior to that?</p> <p>3 A Yes.</p> <p>4 Q Okay. And that was in 2000 and</p> <p>5 what?</p> <p>6 A I believe it was '04 and '05.</p> <p>7 Q So not '02, 2000 --</p> <p>8 A No, I think it was '04.</p> <p>9 Q I am not too familiar with the</p> <p>10 set up of Internal Affairs. So if you could tell</p> <p>11 me, you said you were a sergeant in Internal</p> <p>12 Affairs in 2004 for a year or so. Then in 2006</p> <p>13 you went back as an investigator?</p> <p>14 A Sent back, yes.</p> <p>15 Q Sent back as an investigator.</p> <p>16 Which rank would be higher, the sergeant or the</p> <p>17 investigator?</p> <p>18 A I was -- investigator, I was a</p> <p>19 Lieutenant Investigator or Sergeant Investigator,</p> <p>20 one in the same.</p> <p>21 Q When you went back in 2006, you</p> <p>22 were a Lieutenant Investigator?</p> <p>23 A I was a lieutenant. My function</p> <p>24 was Internal Affairs Investigator.</p> <p>25 Q Now, I want to direct your</p>



Page 10	Page 12
<p>1 attention more closely to the incident that we</p> <p>2 are here for now. At a certain point in time you</p> <p>3 became involved in the investigation concerning</p> <p>4 Kevin Francis. Correct?</p> <p>5 A Yes.</p> <p>6 Q Can you indicate how it is you</p> <p>7 became involved in that matter?</p> <p>8 A Most likely I was just assigned</p> <p>9 to the assignment when it came in by the</p> <p>10 executive officer.</p> <p>11 Q Do you know how were you were</p> <p>12 assigned?</p> <p>13 A It was a preliminary</p> <p>14 investigation so most likely it would have been</p> <p>15 verbally.</p> <p>16 Q Do you know where the initial</p> <p>17 information came from that there was an incident</p> <p>18 involved in which Kevin Francis --</p> <p>19 A The best I can recall, it was</p> <p>20 referred as a walk-in.</p> <p>21 Q Walk-in by who?</p> <p>22 A The complainant.</p> <p>23 Q To the best you recall, you are</p> <p>24 not sure?</p> <p>25 A I am not 100 percent. I</p>	<p>1 A No.</p> <p>2 Q If you can tell me, you recall</p> <p>3 at a certain point in time, interviewing Kevin</p> <p>4 Francis. Correct?</p> <p>5 A Yes.</p> <p>6 Q In fact, I was there, if you</p> <p>7 recall?</p> <p>8 A Yes.</p> <p>9 Q When you interviewed Kevin</p> <p>10 Francis, he provided certain information to you.</p> <p>11 Correct?</p> <p>12 A Yes.</p> <p>13 Q What is it that he provided to</p> <p>14 you besides his statement?</p> <p>15 A As far as physical evidence?</p> <p>16 Q Yes.</p> <p>17 A A black T-shirt.</p> <p>18 Q What was the purpose of that</p> <p>19 T-shirt being provided to you?</p> <p>20 A He claimed he was urinated on by</p> <p>21 the officers he encountered.</p> <p>22 Q Did you request that T-shirt?</p> <p>23 A How it came in my possession, I</p> <p>24 don't remember. I remember taking possession of</p> <p>25 it.</p>
Page 11	Page 13
<p>1 remember doing a preliminary investigation.</p> <p>2 Usually in a preliminary investigation the</p> <p>3 complainant is there.</p> <p>4 Q Do you have a file concerning</p> <p>5 this matter?</p> <p>6 A Yes, there was a report filed.</p> <p>7 Q I am going to ask, Ms. Benjamin,</p> <p>8 if you can get a copy of the report.</p> <p>9 MS. BENJAMIN: I gave you the</p> <p>10 Internal Affairs file.</p> <p>11 MR. DAVENPORT: I am talking</p> <p>12 about the preliminary notice.</p> <p>13 MS. BENJAMIN: That was part of</p> <p>14 the preliminary investigation, all part of the --</p> <p>15 Q Did you take any notes at all</p> <p>16 concerning this walk-in?</p> <p>17 A Handwritten notes?</p> <p>18 Q If it was a walk-in.</p> <p>19 A I am sure I probably did, yes.</p> <p>20 Q Now, with regard to those notes,</p> <p>21 the handwritten notes, would you keep those?</p> <p>22 A Only until my pad is full and</p> <p>23 then I would just destroy the pad. I would start</p> <p>24 a new one.</p> <p>25 Q You wouldn't have that anymore?</p>	<p>1 Q What was the purpose of taking</p> <p>2 possession of it?</p> <p>3 A Lab testing.</p> <p>4 Q When you say lab testing, what</p> <p>5 is it you were going to have tested?</p> <p>6 A To see if there was actually</p> <p>7 urine on the shirt.</p> <p>8 Q Did you do that?</p> <p>9 A Yes.</p> <p>10 Q What did you do with the T-shirt</p> <p>11 once you got it?</p> <p>12 A Sent to the State Police lab in</p> <p>13 Hamilton, New Jersey.</p> <p>14 Q Prior to sending it to the state</p> <p>15 lab, did you take any photographs of the T-shirt?</p> <p>16 A Yes.</p> <p>17 Q You have copies of those?</p> <p>18 A I am sure they are in the file.</p> <p>19 Q So you sent the T-shirt to the</p> <p>20 state lab. Right?</p> <p>21 A Yes.</p> <p>22 Q And how is it that you sent the</p> <p>23 T-shirt, how did you send it?</p> <p>24 A Hand-delivered to Sea Girt, New</p> <p>25 Jersey.</p>

Page 14	Page 16
<p>1 Q It was hand-delivered to Sea 2 Girt? 3 A Yes. 4 Q Did you ever receive the T-shirt 5 back after you sent it? 6 A Yes. 7 Q And do you know where the 8 T-shirt is now? 9 A No. 10 Q When you received the T-shirt, 11 what did you do with it? 12 A The best I can recall, I 13 notified your office that it was back and for you 14 to pick it up. 15 Q And how did you do that? 16 A By the card you had left me when 17 we first met. 18 Q When you say to the best you 19 recall, are you saying you are sure you notified 20 me? 21 A I am sure I did notify you. I 22 was under the assumption up until this notice 23 that you had the T-shirt back. 24 Q Where would it have been left? 25 A Where would --</p>	<p>1 Q Did you ever send this T-shirt 2 to the property room? 3 A I am assuming I did if you 4 didn't pick it up. 5 Q Do you ever recall me coming to 6 pick it up? 7 A I remember meeting you, I don't 8 know how many times. I honestly can't recall. 9 Q Do you recall anyone coming to 10 pick the T-shirt up? 11 A I assume that it was picked up. 12 Q That's not my question, sir. My 13 question is do you recall anyone coming to pick 14 the T-shirt up specifically? 15 A In detail, no. 16 Q Now, when someone comes to pick 17 up evidence or property as you refer to it, that 18 was used during the course of an Internal Affairs 19 investigation, do you make them sign a receipt to 20 indicate that they received it? 21 A Yes. 22 Q Do you have a receipt indicating 23 that that T-shirt was ever picked up? 24 A Not in my possession, no. 25 Q Have you ever seen a receipt</p>
Page 15	Page 17
<p>1 Q When it came to the police 2 department, where did it go? 3 A It was under my desk waiting for 4 you to get it. 5 Q That's where you left it -- 6 A In my file cabinet. 7 Q You didn't put it in the 8 evidence room? 9 A It wasn't evidence, it was 10 private property. 11 Q It wasn't evidence. And the -- 12 strike that. 13 And when you say property, as 14 you refer to it, comes into your possession 15 during an Internal Affairs investigation, is that 16 what you normally do with it, stick it in your 17 desk or under your desk? 18 A No, my best attempt is to return 19 it to the owner. 20 Q Your best attempt is to return 21 it to the owner? 22 A Yes. 23 Q And if you cannot return it to 24 the owner, what do you do then? 25 A Send it to the property room.</p>	<p>1 indicating that that T-shirt was ever picked up? 2 A No. 3 Q And it's fair to say that that 4 T-shirt was not in fact picked up? 5 A Again, I was under the 6 assumption up until the notice of this day that 7 it was. 8 Q If someone was coming to pick 9 the T-shirt up, where would they get it from? 10 A It would have been from me. 11 Q They would have to come and pick 12 it up from you? 13 A Yes. 14 Q And then you would have had them 15 sign a receipt? 16 A Yes. 17 Q And you don't dispute that the 18 T-shirt was in fact provided to you. Correct? 19 A No, I do not dispute that. 20 Q In fact, when the T-shirt was 21 provided to you, I was there. Correct? 22 A Yes. 23 Q My client was there. Correct? 24 A Yes. 25 Q His mother was there. Correct?</p>

Page 18	Page 20
<p>1 A Yes.</p> <p>2 Q And I had an investigator with</p> <p>3 me that turned the T-shirt over to you. Correct?</p> <p>4 A That part I don't recall,</p> <p>5 another party.</p> <p>6 Q You don't have any recollection</p> <p>7 to dispute that. Correct?</p> <p>8 A About an independent</p> <p>9 investigator?</p> <p>10 Q Yes.</p> <p>11 A If you say he was there, I have</p> <p>12 no reason to doubt you.</p> <p>13 (Whereupon, Exhibit P-1, Letter</p> <p>14 dated April 11, 2008, is received and marked for</p> <p>15 Identification by the reporter.)</p> <p>16 Q Lieutenant Marasco, I am going</p> <p>17 to ask you to look at P-1 after your attorney</p> <p>18 looks at it. Do you ever recall receiving -- can</p> <p>19 you identify what that document is, please.</p> <p>20 A One minute, please.</p> <p>21 Q Sure.</p> <p>22 A Okay. The question again?</p> <p>23 Q Can you identify that letter?</p> <p>24 A A letter from your office to me.</p> <p>25 Q Do you recall receiving that</p>	<p>1 look at the whole investigation and read through</p> <p>2 it.</p> <p>3 Q An investigation of this type,</p> <p>4 what would you normally do?</p> <p>5 MS. BENJAMIN: I am going to</p> <p>6 object to the form, you can answer it.</p> <p>7 A It all depends on what stage of</p> <p>8 the investigation you are at. If it's in the</p> <p>9 county, you do nothing. You notify them what you</p> <p>10 have, if you have anything.</p> <p>11 Q Well, was this investigation</p> <p>12 sent to the county?</p> <p>13 A Yes.</p> <p>14 Q What happened with that?</p> <p>15 A I believe it was returned.</p> <p>16 Q It was returned as?</p> <p>17 A No criminal.</p> <p>18 Q Now, you ultimately did make</p> <p>19 some findings here. Correct?</p> <p>20 A Yes.</p> <p>21 Q What were your findings?</p> <p>22 A The best I recall, that I could</p> <p>23 not prove or disprove the fact that your client</p> <p>24 was urinated on or assaulted, however, the</p> <p>25 officer involved did deviate from department</p>
Page 19	Page 21
<p>1 letter?</p> <p>2 A Two years ago? I don't remember</p> <p>3 it.</p> <p>4 Q Okay. Can you indicate what the</p> <p>5 contents of that letter are?</p> <p>6 A Acknowledging correspondence</p> <p>7 that was sent to you and a request to return</p> <p>8 clothing that was provided for analysis.</p> <p>9 Q Okay. Thank you.</p> <p>10 Now, you did in fact receive a</p> <p>11 report from the State Police lab concerning this</p> <p>12 matter. Correct?</p> <p>13 A Yes.</p> <p>14 Q And do you recall what that</p> <p>15 report indicated?</p> <p>16 A Negative for urine.</p> <p>17 Q And you did not in fact after</p> <p>18 that, or at least you did not stop your</p> <p>19 investigation, with that report?</p> <p>20 A No, I did not.</p> <p>21 Q What else did you do?</p> <p>22 A Exactly, I don't know. I don't</p> <p>23 know what point in time it came back and where</p> <p>24 exactly I was in the investigation, if it was at</p> <p>25 the County Prosecutor's Office, I would have to</p>	<p>1 orders with other actions that night and they</p> <p>2 were charged accordingly for that.</p> <p>3 Q How did they deviate?</p> <p>4 A By not processing a juvenile</p> <p>5 they came across in the proper manner with regard</p> <p>6 to a curfew violation.</p> <p>7 Q What was supposed to be done?</p> <p>8 A They are taken to a juvenile</p> <p>9 processing unit on Dickerson Street, they should</p> <p>10 be processed up there.</p> <p>11 Q And to be processed, when you</p> <p>12 say processed, what are you referring to?</p> <p>13 A It all depends if he's a</p> <p>14 first-time offender, second or third, it's a</p> <p>15 different process for each.</p> <p>16 Q Tell me what happens if it's a</p> <p>17 first-time offender, if you know?</p> <p>18 A I would have to get the general</p> <p>19 order to give you an accurate description,</p> <p>20 normally they are logged in, warned and their</p> <p>21 parents are notified to pick them up.</p> <p>22 Q You found there had been a</p> <p>23 department violation by the officers involved?</p> <p>24 A Yes.</p> <p>25 Q What officers were those?</p>

Page 22	Page 24
<p>1 A I believe one was Matos and I 2 don't remember the other name offhand. 3 Q You do know there was in fact a 4 violation that you found. Correct? 5 A Yes. 6 Q Now, would the other person be 7 Tavares? 8 A That sounds familiar, yes. 9 Q What -- when conducting an 10 internal affairs investigation, and you find 11 wrong doing, if your investigation leads to the 12 conclusion that other officers were wrong but 13 were not necessarily subjects of that 14 investigation, would you expand the investigation 15 to include the other officers? 16 A Yes. 17 Q Now, in this case, you had the 18 opportunity to speak with superior officers 19 involved in this case also. Correct? 20 A I don't remember exactly who I 21 talked to. I would have to read the report. 22 Q You don't remember exactly who 23 you talked to? 24 A I am sure it was more than the 25 two who were involved.</p>	<p>1 at that report, please. 2 A Okay. 3 Q So if you could, could you just 4 give a summary concerning what Adolph Vazquez 5 told you? 6 A Can I read the report again? 7 Remember being present at 150 New York Avenue 8 looking for suspects who might have been involved 9 in a burglary. During the search he was advised 10 by unit 314 that a possible suspect and called 11 them over to Nicholas and Adams. Once they 12 arrived, they described a thin black juvenile and 13 he told them to standby to speak with robbery who 14 was in route. He then states he picked up and 15 left the location. 16 Q So Lieutenant Vazquez, during 17 your investigation, did you find that he was the 18 superior officer involved in this investigation 19 at the time? 20 A He was present there. 21 Q Was he the most superior 22 officer? 23 A Again, I would have to read it 24 front to back to make sure he was. 25 Q So you don't recall?</p>
Page 23	Page 25
<p>1 Q You know that you spoke with a 2 Police Officer Daniel Gregoire, G-R-E-G-O-I-R-E? 3 A No. 4 Q What about a Lieutenant Adolph 5 Vazquez? 6 A Did I speak with him? 7 Q Yes. 8 A If it's in the report, I did. I 9 don't remember the intimate details of the 10 investigation at this time. 11 Q Okay. I'd like to have this 12 page of the report marked. 13 (Whereupon, Exhibit P-2, Report 14 dated 1/3/08, is received and marked for 15 Identification by the reporter.) 16 Showing you what's been marked 17 P-2 for Identification. Can you indicate what 18 that is? 19 A It's my investigation, page 20 seven. 21 Q It does indicate that you did 22 speak with -- let me see that, please, with 23 Lieutenant Adolph Vazquez. Correct? 24 A Yes. 25 Q Okay. Can you just take a look</p>	<p>1 A Not offhand, no, I mean -- there 2 could have been others. 3 Q Okay. Now, you specifically 4 asked this lieutenant whether or not he had any 5 involvement in the disposition of the male 6 juvenile. Correct? 7 A Again, I would have to read it. 8 If that's what it says in my report, that's what 9 it says. 10 Q I want to make sure I understand 11 what you are asking. I am going to direct you 12 to, under the section synopsis of personnel 13 statement, third paragraph down, if you could 14 explain to me what that means. 15 A I asked him -- 16 Q Let me interrupt you. First let 17 me ask you to just read that sentence. 18 A When asked if unit 314 ever 19 reached out for specific instructions and 20 guidance in reference to disposition of the male 21 juvenile, the lieutenant replied no, they did 22 not. 23 Q Indicate to me what that 24 sentence is designed to mean. 25 A I was looking to gather from the</p>



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<p>1 lieutenant if the officers just reached out to a</p> <p>2 supervisor if they needed help, if they had a</p> <p>3 question of what was the right thing to do at the</p> <p>4 time.</p> <p>5 Q He indicated that they did not</p> <p>6 ask?</p> <p>7 A They did not ask for any help.</p> <p>8 Q Now, during the course of your</p> <p>9 investigation, did you have the opportunity to</p> <p>10 review personnel files of the officers who were</p> <p>11 involved?</p> <p>12 A Personnel files, no.</p> <p>13 Q Any type of files concerning</p> <p>14 complaints that may have been lodged against the</p> <p>15 officers in the past?</p> <p>16 A We review their disciplinary</p> <p>17 abstract.</p> <p>18 Q You reviewed those here?</p> <p>19 A I am sure I did.</p> <p>20 (Whereupon, Exhibit P-3, Report</p> <p>21 dated January 3, 2008, is received and marked for</p> <p>22 Identification by the reporter.)</p> <p>23 Q Okay. I am showing you what's</p> <p>24 been marked P-3 for Identification. There is an</p> <p>25 indication that you reviewed the disciplinary</p>	<p>1 them to be in violation here is because, I take</p> <p>2 it, when general orders were put out, the orders</p> <p>3 are expected to be followed --</p> <p>4 A They are obligated to follow</p> <p>5 those orders.</p> <p>6 Q Now, when you make your</p> <p>7 findings, after you make your findings, do you</p> <p>8 have any further role in the matter or is your</p> <p>9 case pretty much closed out and then it moves</p> <p>10 onto another department or division for further</p> <p>11 handling?</p> <p>12 A If it's sustained, it does move</p> <p>13 onto another department, the advocate section,</p> <p>14 and my involvement would be when it goes to</p> <p>15 police trials, to testify as a witness against</p> <p>16 the officers that are accused.</p> <p>17 Q Did that happen here?</p> <p>18 A Yes, but I don't believe I</p> <p>19 testified.</p> <p>20 Q So you indicate that there was a</p> <p>21 specific police trial?</p> <p>22 A Yes.</p> <p>23 Q In this police trial, who was</p> <p>24 involved in it?</p> <p>25 A The officers that are accused.</p>
Page 27	Page 29
<p>1 records involved in this matter. Correct?</p> <p>2 A Yes.</p> <p>3 Q What did you find?</p> <p>4 A Found that Officer Tavares had</p> <p>5 two prior investigations for excessive force, one</p> <p>6 was closed out as not sustained and the other was</p> <p>7 unfounded. He had three investigations</p> <p>8 concerning disobedience to orders and all were</p> <p>9 sustained. Officer Matos had no prior</p> <p>10 investigations for excessive force, he had two</p> <p>11 for disobedience to orders and both were</p> <p>12 sustained.</p> <p>13 Q It does say you found that there</p> <p>14 was an infraction committed here. Correct?</p> <p>15 A Yes.</p> <p>16 Q What was the nature of the</p> <p>17 infraction?</p> <p>18 A I believe it was disobedience to</p> <p>19 orders.</p> <p>20 Q When you say disobedience to</p> <p>21 orders, do you recall exactly what the orders</p> <p>22 were that they disobeyed in this matter?</p> <p>23 A The general order pertaining to</p> <p>24 the curfew violations.</p> <p>25 Q And the reason why you found</p>	<p>1 Q So both officers would have had</p> <p>2 trials in this matter?</p> <p>3 A If they were both charged, yes.</p> <p>4 Q Let me go back. You say there</p> <p>5 could be a police trial. Right? Or is it</p> <p>6 automatically a police trial if there are</p> <p>7 sustained findings here.</p> <p>8 A If it's a violation of a lower</p> <p>9 nature, they would have a command conference</p> <p>10 which would be the commanding officer would hear</p> <p>11 the matter. Most of our jobs, the Internal</p> <p>12 Affairs, most go to police trials.</p> <p>13 Q Most go to police trials. Is</p> <p>14 there a mechanism in place where you don't</p> <p>15 necessarily have a trial, where it can be</p> <p>16 resolved by way of some type of agreement</p> <p>17 concerning the disposition, that's what I am</p> <p>18 trying to find out, do you automatically have to</p> <p>19 have a trial or can a person say, okay, I am</p> <p>20 wrong, I'd like to take some type of sanction,</p> <p>21 punishment?</p> <p>22 A There are plea agreements at</p> <p>23 police trials, yes.</p> <p>24 Q In this case there was not a</p> <p>25 plea agreement?</p>

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<p>1 A There might have been, I don't</p> <p>2 know. I just don't remember testifying that day.</p> <p>3 Q So you don't have -- are you</p> <p>4 testifying that you knew that trials were</p> <p>5 scheduled in this matter?</p> <p>6 A I believe I was present that</p> <p>7 day. I got a subpoena for it.</p> <p>8 Q When did that take place?</p> <p>9 A I have no idea. Probably within</p> <p>10 months of my investigation, that's usually the</p> <p>11 time frame.</p> <p>12 Q At these police trials, do the</p> <p>13 officers normally testify?</p> <p>14 A Some do, some don't.</p> <p>15 Q There would certainly be</p> <p>16 witnesses there?</p> <p>17 A Yes.</p> <p>18 Q Well, in this case, do you know</p> <p>19 if the complainant would have been called?</p> <p>20 A I don't recall. That would be</p> <p>21 up to the advocate section to subpoena witnesses</p> <p>22 and provide discovery.</p> <p>23 Q And in these police trials as</p> <p>24 you refer to them, is there a court reporter</p> <p>25 present?</p>	<p>1 question, that Officers Matos and Tavares did</p> <p>2 have custody of Kevin Francis. Correct?</p> <p>3 A They did have custody of</p> <p>4 somebody, I don't know if I totally pinpointed it</p> <p>5 was your defendant. I don't know, I would have</p> <p>6 to read it again.</p> <p>7 Q You found them to have been in</p> <p>8 violation of the policy for the curfew violation?</p> <p>9 A They definitely had a juvenile</p> <p>10 in their possession. I don't know if I</p> <p>11 established if it was Kevin Francis or not. I</p> <p>12 might have, I just would have to review the</p> <p>13 report.</p> <p>14 (Whereupon, Exhibit P-4, Lab</p> <p>15 Report, two pages, is received and marked for</p> <p>16 Identification by the reporter.)</p> <p>17 Q Lieutenant, I am showing you</p> <p>18 what's been marked P-4 for Identification. Can</p> <p>19 you indicate what that is?</p> <p>20 A New Jersey State Police Office</p> <p>21 of Forensic Scientists, Laboratory Report.</p> <p>22 Q That's the report you received</p> <p>23 back from the lab concerning the DNA analysis in</p> <p>24 this case. Correct?</p> <p>25 A I don't know if they did a DNA</p>
Page 31	Page 33
<p>1 A It is done by tape recorder.</p> <p>2 Q There is a tape recorder?</p> <p>3 A Yes.</p> <p>4 MR. DAVENPORT: Ms. Benjamin, do</p> <p>5 you know if that took place here?</p> <p>6 MS. BENJAMIN: I have no idea.</p> <p>7 MR. DAVENPORT: I'd like you to</p> <p>8 find out if there was a police trial and if I</p> <p>9 could have the discovery on that. Thank you.</p> <p>10 Q But you specifically went to a</p> <p>11 hearing but were not called concerning this</p> <p>12 matter?</p> <p>13 A That's the best I can remember.</p> <p>14 I remember being there, I don't remember</p> <p>15 testifying.</p> <p>16 Q And the normal course of</p> <p>17 business, when you had these police trials, that</p> <p>18 you were involved as an investigating officer, do</p> <p>19 you normally find out the disposition, what</p> <p>20 happened?</p> <p>21 A If you want to inquire on your</p> <p>22 own, but you are not officially notified.</p> <p>23 Q Now, your investigation did in</p> <p>24 fact lead you to at least come to the conclusion</p> <p>25 that at a certain point in time, on the date in</p>	<p>1 analysis. To tell you the truth, I don't know</p> <p>2 what test they did on it.</p> <p>3 Q It was a test to find out if</p> <p>4 possible, whether or not, there was any urine on</p> <p>5 the T-shirt. Correct?</p> <p>6 A Yes, that's what I requested of</p> <p>7 them.</p> <p>8 Q In that report it indicates</p> <p>9 there was no finding of urine in the T-shirt.</p> <p>10 Correct?</p> <p>11 A Yes.</p> <p>12 Q And then there is a section down</p> <p>13 towards the bottom of the report that says</p> <p>14 something to the effect of the shirt was not</p> <p>15 submitted for trace analysis, please contact the</p> <p>16 lab for trace analysis if you so desire,</p> <p>17 something to that effect. Correct?</p> <p>18 A Yes.</p> <p>19 Q Do you have an understanding of</p> <p>20 what that means, the portion for trace analysis?</p> <p>21 A I think it was explained to me,</p> <p>22 if there was -- if it was positive, there would</p> <p>23 have been a further test for identification but I</p> <p>24 don't recall 100 percent.</p> <p>25 Q So you don't know what that</p>

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<p>1 means?</p> <p>2 A I remember asking about it, but</p> <p>3 at this point, I don't remember what the</p> <p>4 explanation was.</p> <p>5 Q In fact what you just indicated</p> <p>6 about if it was positive, there would be further</p> <p>7 analysis, you are not sure if that refers to that</p> <p>8 sentence that you just -- that I just summarized</p> <p>9 for you at all. Correct?</p> <p>10 A I'm not sure I understand what</p> <p>11 you are saying. What the lab scientists,</p> <p>12 whatever they are referred to, was negative for</p> <p>13 urine, had it been positive, then the trace test</p> <p>14 would have been done. That's the way I</p> <p>15 understood it. I took that as a negative for</p> <p>16 urine.</p> <p>17 Q That's the way you understood</p> <p>18 it, but you are not certain of it, as you sit</p> <p>19 here today, what the second and third sentences</p> <p>20 in that report are referring to?</p> <p>21 MS. BENJAMIN: I am going to</p> <p>22 object to the form. You can answer the question.</p> <p>23 A I thought I did. This would</p> <p>24 have been necessary if the first sentence would</p> <p>25 have been positive. It didn't. It was explained</p>	<p>1 to clearly identify the T-shirt in terms of who</p> <p>2 the designer was, you know how you may have a</p> <p>3 name tag or care tag in the back of the T-shirt,</p> <p>4 may say Fruit of the Loom or whoever, whoever the</p> <p>5 manufacturer is, did you take any steps to</p> <p>6 clearly identify the T-shirt?</p> <p>7 A Outside of a black T-shirt, I</p> <p>8 don't know if that was entered onto the property</p> <p>9 sheet.</p> <p>10 Q The T-shirt you took possession</p> <p>11 of -- if may I have this marked, please.</p> <p>12 (Whereupon, Exhibit P-5,</p> <p>13 Property Form dated 7/24/07, is received and</p> <p>14 marked for Identification by the reporter.)</p> <p>15 Q Can you identify that document,</p> <p>16 please.</p> <p>17 A Newark Police Department</p> <p>18 Property Form.</p> <p>19 Q On that form, that form</p> <p>20 basically indicates what it is that you took</p> <p>21 possession of concerning the T-shirt when it was</p> <p>22 presented to you for your investigation.</p> <p>23 Correct?</p> <p>24 A Yes.</p> <p>25 Q What does it indicate you took</p>
Page 35	Page 37
<p>1 to me I didn't have to worry about that.</p> <p>2 Q And you are sure about that?</p> <p>3 A As best I can recall.</p> <p>4 Q Who did you speak to?</p> <p>5 A Whoever I dealt with at the lab,</p> <p>6 I'm not sure.</p> <p>7 Q Would it be the person that</p> <p>8 signed the report, Courtney McDonald (ph).</p> <p>9 A Maybe, whoever I dealt with when</p> <p>10 I dropped it off.</p> <p>11 Q Do you know whether or not the</p> <p>12 state lab took pictures of the T-shirt that was</p> <p>13 submitted to them for analysis?</p> <p>14 A I have no knowledge of their</p> <p>15 procedures once they received it.</p> <p>16 Q Now, when you came in possession</p> <p>17 of the T-shirt that was submitted for analysis in</p> <p>18 this case, were you careful to identify the</p> <p>19 T-shirt?</p> <p>20 MS. BENJAMIN: Objection to the</p> <p>21 form. You can answer it.</p> <p>22 A I don't understand your</p> <p>23 question.</p> <p>24 Q I'll try to clarify it. What I</p> <p>25 am asking you is did you make any effort at all</p>	<p>1 possession of?</p> <p>2 A Of an extra large black T-shirt.</p> <p>3 Q That's all it says. Right?</p> <p>4 A Yes.</p> <p>5 Q It doesn't indicate who the</p> <p>6 manufacturer was or who the designer was or</p> <p>7 anything to that effect. Correct?</p> <p>8 A It doesn't state that.</p> <p>9 Q It just says -- let me take a</p> <p>10 look at it. It just says extra large black</p> <p>11 T-shirt. Correct?</p> <p>12 A Yes.</p> <p>13 Q So it doesn't have any</p> <p>14 indication whether it was Fruit of the Loom,</p> <p>15 Hahnes, Calvin Klein, whatever?</p> <p>16 A On that report, it does not.</p> <p>17 Q Is that on any report?</p> <p>18 A I believe a property report was</p> <p>19 done by Lieutenant Ballard (ph). He might have</p> <p>20 indicated more details.</p> <p>21 Q A property report by Lieutenant</p> <p>22 Ballard?</p> <p>23 A Yes.</p> <p>24 Q Not sure if I asked this</p> <p>25 question or not, but do you know whether or not</p>

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<p>1 the State Police lab would have taken a T-shirt</p> <p>2 -- a picture -- excuse me, do you know whether or</p> <p>3 not the State Police lab would have taken a</p> <p>4 picture of the T-shirt that was presented to them</p> <p>5 for analysis?</p> <p>6 A I don't know the procedures at</p> <p>7 all.</p> <p>8 (Whereupon, a recess is taken.)</p> <p>9 Q Now, Lieutenant, when you began</p> <p>10 the investigation into this case, what</p> <p>11 specifically were the nature of the allegations</p> <p>12 that you were going to be investigating?</p> <p>13 A I believe it was classified as</p> <p>14 an excessive force investigation.</p> <p>15 Q And what were your findings with</p> <p>16 regard to excessive force in this matter.</p> <p>17 A I was unable to sustain the</p> <p>18 allegations, not sustained was the official</p> <p>19 close-out.</p> <p>20 Q In fact, you indicate in your</p> <p>21 letter to Kevin Francis dated January 3, 2008</p> <p>22 that although the evidence in this investigation</p> <p>23 indicates the facts obtained cannot prove or</p> <p>24 disprove your original case, your original</p> <p>25 complaint, there is sufficient evidence to</p>	<p>1 to identify it, I don't have any further</p> <p>2 questions on it.</p> <p>3 A It's what we call a disposition</p> <p>4 letter.</p> <p>5 Q And it's dated?</p> <p>6 A January 3, 2008.</p> <p>7 Q That's a letter that we just</p> <p>8 referred to, that you sent to my client, Mr.</p> <p>9 Francis. Correct?</p> <p>10 A Yes.</p> <p>11 Q Indicating that there was</p> <p>12 sufficient evidence to sustain a department</p> <p>13 violation. Correct?</p> <p>14 A Yes.</p> <p>15 Q That's P-6 for the record.</p> <p>16 (Whereupon, Exhibit P-7, Motor</p> <p>17 Patrol Log, is received and marked for</p> <p>18 Identification by the reporter.)</p> <p>19 Q Lieutenant, you have P-7 before</p> <p>20 you. Can you identify what that is?</p> <p>21 A A Newark Police Department Motor</p> <p>22 Patrol Log.</p> <p>23 Q What unit is that Motor Patrol</p> <p>24 Log for?</p> <p>25 A Unit 314.</p>
Page 39	Page 41
<p>1 sustain a department violation that may or may</p> <p>2 not be related. Correct?</p> <p>3 A Yes.</p> <p>4 Q So basically you don't really</p> <p>5 know or your investigation could not lead you to</p> <p>6 a conclusion as to whether or not the excessive</p> <p>7 force occurred. Correct?</p> <p>8 A That's correct.</p> <p>9 Q So maybe it doesn't happen,</p> <p>10 correct, excessive force?</p> <p>11 A I couldn't prove it either way.</p> <p>12 Q So if you could answer the</p> <p>13 question, so maybe the excessive force did not</p> <p>14 happen. Correct?</p> <p>15 A Again, I could not prove through</p> <p>16 my investigation either way. I don't like to</p> <p>17 deal in maybes.</p> <p>18 Q So it could have happened.</p> <p>19 Correct?</p> <p>20 A Maybe.</p> <p>21 (Whereupon, Exhibit P-6, January</p> <p>22 3, 2008 letter to Kevin Francis, is received and</p> <p>23 marked for Identification by the reporter.)</p> <p>24 Q Can you take a look at what we</p> <p>25 marked P-6 for Identification. I just want you</p>	<p>1 Q Which officers would that cover?</p> <p>2 A Antonio Tavares and Anthony</p> <p>3 Matos.</p> <p>4 Q Can you indicate to me</p> <p>5 specifically what that document is and what the</p> <p>6 purpose of that document is?</p> <p>7 A It's a chronological listing of</p> <p>8 the unit's activities through their tour.</p> <p>9 Q And when you say the unit, you</p> <p>10 are speaking of the vehicle they are in?</p> <p>11 A The unit, to be more specific,</p> <p>12 the unit and the vehicle can be two different</p> <p>13 numbers.</p> <p>14 Q What is 314?</p> <p>15 A The unit number.</p> <p>16 Q What is the unit?</p> <p>17 A Would be their regular call sign</p> <p>18 in their geographical area which would be 314.</p> <p>19 The vehicle was 317.</p> <p>20 Q Now, when you -- I take it you</p> <p>21 reviewed P-7 during your investigation?</p> <p>22 A Yes.</p> <p>23 Q And what purpose did you review</p> <p>24 P-7 for?</p> <p>25 A To see if any units were in the</p>



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<p>1 area where the complainant alleges the incident 2 happened. 3 Q What did you find based on the 4 Motor Patrol Log? 5 A I would have to check the report 6 to corollate what I found. 7 Q You can't make it out by just 8 looking at the motor patrol log individually? 9 A I don't know if the times, I do 10 recognize 150 New York Avenue, which was one 11 location that was used. I don't know if the 12 times match up or if I made the correlation. I 13 would have to see the report. 14 Q Is there a specific section of 15 your report that you would look to? 16 A Somewhere in there, I don't know 17 if it's -- it's been years. 18 Q Well, with your attorney's 19 permission, I would like to have you take a look 20 at your report without the necessity of marking 21 the entire report. 22 MS. BENJAMIN: That's fine. 23 Q So if you can see if you find it 24 in your report. 25 A It's mentioned on page six of my</p>	<p>1 information put onto the sheet? 2 A By the observer. 3 Q What observer would that be? 4 A That would have been officer 5 number two, the observer would have been Anthony 6 Matos. 7 Q It would have been put on the 8 patrol log by the officers. Correct? 9 A Yes. 10 Q It would be very easy for the 11 officer just not to write this location down on 12 the patrol log. Correct? 13 MS. BENJAMIN: Object to the 14 form. You can answer. 15 A I couldn't answer on what they 16 do. 17 Q It's easy for an officer, if he 18 goes somewhere, either by inadvertence or 19 purposefully, he doesn't write his location on 20 the patrol log? 21 A Assume mistakes could be made. 22 Q Or it could be done 23 purposefully. Right? 24 A I guess. 25 (Whereupon, Exhibit P-8, Tour</p>
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<p>1 investigation. 2 Q What do you find there? 3 A A check of the third precinct 4 log sheet reveals no police action taken at any 5 of the locations the complainant provided. The 6 log sheet reveals that Officer Matos worked with 7 Officer Tavares and the supervisor working was 8 Officer Vazquez. 9 Q When you refer to the no police 10 action taken at the location, what are you 11 referring to in terms of location, what locations 12 were you looking for? 13 A I believe what the complainant 14 was alleging, the actual contact with the police 15 was on Doremus Avenue and where he made initial 16 contact. 17 Q When you say the location, are 18 you looking for the location where Mr. Francis 19 alleges that he was assaulted and urinated on, is 20 that what you are referring to? 21 A Any location he would have gave 22 me, I would have tried to see if there was a unit 23 in that area. 24 Q How is it that the information 25 that's on the motor patrol log is -- how is that</p>	<p>1 Assignment Report, two pages, is received and 2 marked for Identification by the reporter.) 3 Q Lieutenant, I am showing you 4 what's been marked P-8. Can you identify what 5 that document is? 6 A Tour assignment sheets for the 7 Third Precinct. Shows who worked that night, 8 what cars they had and what areas they were 9 assigned. 10 Q Is there reference to the 11 subjects of your investigation, Officer Matos 12 and/or Tavares in that report? 13 A Yes. 14 Q What does it indicate? 15 A On the second page I see Tavares 16 as 314 and -- with Matos, yes, 314 using the 317 17 car. 18 Q Pretty much it? 19 A It gives the squads and other 20 information. 21 (Whereupon, Exhibit P-9, Event 22 Chronology, is received and marked for 23 Identification by the reporter.) 24 Q I am showing you what's been 25 marked P-9 for Identification. Can you indicate</p>

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<p>1 what that is?</p> <p>2 A It's an Event Chronology.</p> <p>3 Q What is the purpose of P-9?</p> <p>4 A This is generated by the radio</p> <p>5 room, whatever information is inputted into the</p> <p>6 computer by the operator, it's memorialized in a</p> <p>7 report like this.</p> <p>8 Q Does it have something to do</p> <p>9 with a specific event, all events, why is it</p> <p>10 generated, for what purpose?</p> <p>11 A For a specific event.</p> <p>12 Q And that's the Event Chronology</p> <p>13 that you reviewed in conjunction with your</p> <p>14 investigation. Correct?</p> <p>15 A If it was in my report, yes.</p> <p>16 Q You can't say independently</p> <p>17 whether or not that's the Event Chronology that</p> <p>18 you reviewed?</p> <p>19 A Two and a half years later, you</p> <p>20 hand me a piece of paper, I would have to look at</p> <p>21 the original to be 100 percent sure.</p> <p>22 Q Your original what?</p> <p>23 A My investigation. You handed me</p> <p>24 a piece of paper. It looks like I would have</p> <p>25 reviewed this at the time but I don't know if</p>	<p>1 that being the Event Chronology you reviewed in</p> <p>2 connection with your investigation though.</p> <p>3 Correct?</p> <p>4 A Correct.</p> <p>5 Q Now, as a former Internal</p> <p>6 Affairs Investigator, you are pretty familiar</p> <p>7 with departmental guidelines and regulations,</p> <p>8 rules, things of that nature, how officers are to</p> <p>9 conduct themselves in their investigations.</p> <p>10 Correct?</p> <p>11 A In general or investigations? I</p> <p>12 don't understand.</p> <p>13 Q I am talking about with respect</p> <p>14 to the procedures that are to be employed by</p> <p>15 officers, patrol units?</p> <p>16 A Yes.</p> <p>17 Q When conducting investigations,</p> <p>18 you are familiar with how they are to conduct</p> <p>19 themselves. Correct?</p> <p>20 A Yes.</p> <p>21 Q Let me ask you a question with</p> <p>22 regard to what's supposed to happen with regard</p> <p>23 to anyone coming into the custody of a</p> <p>24 police officer. In this incident, it's alleged</p> <p>25 that at a certain point in time, Kevin Francis</p>
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<p>1 it's the exact same one.</p> <p>2 Q I'll give you your report back.</p> <p>3 You can take a look.</p> <p>4 A If you want me to answer</p> <p>5 specifically stone yes, I would want my report in</p> <p>6 my folder. I would assume this is correct if</p> <p>7 this is what the city provided to you.</p> <p>8 Q Well, I want to make sure I was</p> <p>9 provided the right document. Is there any</p> <p>10 reference in your report that would indicate that</p> <p>11 that's the Event Chronology?</p> <p>12 A I would have to read --</p> <p>13 Q I'll let you read it. I only</p> <p>14 have a few more questions for you after this.</p> <p>15 A I don't see it specifically</p> <p>16 mentioned in my investigation. It would have</p> <p>17 been something I probably looked at to see if I</p> <p>18 could put the officers at that location.</p> <p>19 Q But you don't know for sure</p> <p>20 whether or not that's your Event Chronology.</p> <p>21 Right?</p> <p>22 A If it's in my original</p> <p>23 investigation, then I would assume it was mine,</p> <p>24 that I looked at it.</p> <p>25 Q You have no reason to dispute</p>	<p>1 was detained by the police officers, Officer</p> <p>2 Matos and Tavares. You are aware that's his</p> <p>3 allegation. Correct?</p> <p>4 A Yes.</p> <p>5 Q And you are also aware of the</p> <p>6 fact that the complainant in your investigation</p> <p>7 alleges that he was assaulted, physically</p> <p>8 assaulted by the officers. Correct?</p> <p>9 A Yes.</p> <p>10 Q And that he was urinated on by</p> <p>11 these officers. Correct?</p> <p>12 A That he claims he was, yes.</p> <p>13 Q He claims he was urinated on by</p> <p>14 these officers. Correct?</p> <p>15 A Yes.</p> <p>16 Q So based on what you have</p> <p>17 learned during the course of your investigation,</p> <p>18 is there any reason that you could find that Mr.</p> <p>19 Francis should have been assaulted by these</p> <p>20 officers at all?</p> <p>21 MS. BENJAMIN: Objection to the</p> <p>22 form of the question. You can answer it.</p> <p>23 Q Based on your investigation,</p> <p>24 should they have hit Mr. Francis?</p> <p>25 A No.</p>

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<p>1 Q You are aware there are times 2 when officers may have to employ physical force. 3 Correct? 4 A Yes. 5 Q But in this case, you did not 6 find that situation to be present. Correct? 7 A Correct. 8 Q And you certainly -- there is 9 never a time when an officer should urinate on a 10 person. Correct? 11 A Correct. 12 Q You certainly didn't find that 13 appropriate conduct in this case? 14 A Had that happened; I didn't find 15 any reason why it would have been appropriate. 16 Q Now, when individuals are 17 detained by police officers and put in a patrol 18 unit, is there any departmental regulation that 19 says there should be some type of report filed? 20 A It should be a field 21 interrogation. 22 Q What is a field interrogation? 23 A Documents the encounter. 24 Q Were there any field 25 investigations prepared by Officer Matos or</p>	<p>1 Q Did they indicate they did drop 2 him off somewhere? 3 A I believe it was Penn Station. 4 Q They dropped him off at Penn 5 Station. Correct? 6 A Yes. 7 Q There was -- now, under those 8 circumstances, there should have been a field 9 interrogation report. Correct? 10 A No, it would have been 11 different, he was a juvenile. 12 Q Why? 13 A Because he was a juvenile. 14 Q Indicate to me what is the 15 difference. 16 A There is two general orders, one 17 is specifically for adults, one for juveniles. 18 They should have followed the juveniles, he 19 should have been taken to Dickerson Street and 20 done that paperwork. 21 Q If it's a juvenile, you don't 22 have to do a field investigation, there is no 23 need to complete a field interrogation report 24 concerning a juvenile? 25 A If he's -- if he's violating the</p>
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<p>1 Tavares in this matter? 2 A I don't believe there was any. 3 Q That would be a requirement. 4 Right? 5 A Yes. 6 Q Well, at a certain point in time 7 during your investigation, didn't the officers 8 indicate to you, maybe this would help refresh 9 your recollection, didn't the officers indicate 10 to you that they did in fact detain Mr. Francis 11 and they did have him in their police unit? 12 A You asked me before. I know 13 they had a juvenile, I just can't remember 14 specifically it was Kevin Francis. They had 15 somebody. 16 Q Do you recall them -- so they 17 did admit to you they had someone. Correct? 18 A Yes. 19 Q Where did they tell you they had 20 him? 21 A Geographically or -- 22 Q Physically, did they have him in 23 the car? 24 A I believe they did have him in 25 the car.</p>	<p>1 curfew, no, and he was. 2 Q Does the curfew specifically 3 indicate that? 4 A The curfew order? 5 Q Yes. 6 A It should. 7 Q Lieutenant, if you could 8 indicate for the record if that is the -- if you 9 could indicate for the record if that's the 10 provision that the officers were found guilty of 11 violating? 12 A It appears to be, yes. 13 Q Or at least the investigation 14 sustained that violation? 15 A Yes. 16 (Whereupon, Exhibit Memorandum 17 dated June 19, 2003, two pages, description, is 18 received and marked for Identification by the 19 reporter.) 20 Q And that -- can you specifically 21 indicate what that document is for the record? 22 A P-10. 23 Q If you could indicate what it is 24 for the record? 25 A It's a Director's Memorandum to</p>

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<p>1 all personnel, subject is curfew ordinances or</p> <p>2 the curfew ordinance.</p> <p>3 Q That's the curfew ordinance that</p> <p>4 informs the officers of what their duties are</p> <p>5 with respect to curfew violations. Correct?</p> <p>6 A Not the actual ordinance, it's</p> <p>7 the memorandum or the order on how we are</p> <p>8 supposed to enforce it.</p> <p>9 Q Now, in that memorandum, does it</p> <p>10 indicate that there is no obligation to fill out</p> <p>11 an interrogation report?</p> <p>12 A I am going to have to read it,</p> <p>13 can you give me a minute.</p> <p>14 Q Sure.</p> <p>15 A Looks like it says the only</p> <p>16 documentation would be a written warning under</p> <p>17 procedures.</p> <p>18 Q Say it again?</p> <p>19 A Under the procedures part, they</p> <p>20 should be issued a written warning.</p> <p>21 Q And it's your understanding that</p> <p>22 based on this memorandum, that there is no need</p> <p>23 to complete a field interrogation report?</p> <p>24 A That would just be redundant in</p> <p>25 information. Everything should be contained on</p>	<p>1 interrogation is for.</p> <p>2 Q That information would have been</p> <p>3 contained in the report concerning the curfew</p> <p>4 violation?</p> <p>5 A Yes.</p> <p>6 Q And so there should be a report</p> <p>7 filled out if there is a curfew violation?</p> <p>8 A Yes.</p> <p>9 Q And what type of report would</p> <p>10 that be?</p> <p>11 A A curfew violation report.</p> <p>12 Q There is a document that says</p> <p>13 Curfew Violation Report?</p> <p>14 A Under the warning -- truthfully,</p> <p>15 I don't know that procedure. I haven't been at</p> <p>16 patrol for years and haven't dealt with juveniles</p> <p>17 in longer.</p> <p>18 Q There should have been some</p> <p>19 report to document that contact?</p> <p>20 A Yes.</p> <p>21 Q Whether it's a field</p> <p>22 interrogation, and you say not necessarily in</p> <p>23 this case, or whether it's a curfew violation</p> <p>24 report of some type?</p> <p>25 A Yes.</p>
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<p>1 the warning.</p> <p>2 Q Now, that is -- is that assuming</p> <p>3 there is no allegations that the juvenile was</p> <p>4 involved in any criminal activity?</p> <p>5 A Referring to the curfew</p> <p>6 violation or the field interrogation?</p> <p>7 Q Field interrogation. The -- let</p> <p>8 me strike that and start over.</p> <p>9 In this instance, at some point</p> <p>10 in time, there is an allegation -- strike that.</p> <p>11 If there had been a violation</p> <p>12 that the juvenile was out past the curfew hours</p> <p>13 and were involved in a criminal activity, say if</p> <p>14 he was questioned about whether or not he tried</p> <p>15 to rob anyone or break-in any cars, and it was</p> <p>16 past the curfew, would there be a necessity to do</p> <p>17 a field interrogation also since he was</p> <p>18 questioned as to whether or not he was involved</p> <p>19 in any criminal activity?</p> <p>20 A If he were to do one, I don't</p> <p>21 think they would have been wrong, but since they</p> <p>22 were doing the curfew violation, that would have</p> <p>23 been the correct way to go and that would</p> <p>24 document where it happened, why it happened and</p> <p>25 when it happened. That's what the field</p>	<p>1 (Whereupon, Exhibit P-11, Letter</p> <p>2 dated December 4, 2007, is received and marked</p> <p>3 for Identification by the reporter.)</p> <p>4 Q Now, Lieutenant, I am going to</p> <p>5 ask you to take a look at P-11 and indicate for</p> <p>6 the record what that is?</p> <p>7 A It's a letter authored by myself</p> <p>8 to the State Police Forensic Lab requesting the</p> <p>9 results of the lab test.</p> <p>10 Q And I am going to -- what is the</p> <p>11 date of that letter?</p> <p>12 A December 4, 2007.</p> <p>13 (Whereupon, Exhibit P-12,</p> <p>14 Evidence Receipt dated July 27, 2007, is received</p> <p>15 and marked for Identification by the reporter.)</p> <p>16 Q If you could indicate what P-12</p> <p>17 is for the record, also?</p> <p>18 A It's an Evidence Receipt from</p> <p>19 the State of New Jersey Department of Law and</p> <p>20 Public Safety Division of State Police East</p> <p>21 Regional Laboratory in Sea Girt, New Jersey.</p> <p>22 Q What is that indicating, that</p> <p>23 document.</p> <p>24 A A T-shirt.</p> <p>25 Q Excuse me?</p>



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<p>1 A A T-shirt.</p> <p>2 Q It indicates that they received</p> <p>3 it?</p> <p>4 A Uh-huh.</p> <p>5 Q Indicating that the police lab</p> <p>6 received the T-shirt from you?</p> <p>7 A Yes.</p> <p>8 Q Okay. I'll take those.</p> <p>9 Now, the persons who ultimately</p> <p>10 became the subject of your investigation, officer</p> <p>11 Antonio Tavares, did you know him prior to the</p> <p>12 investigation?</p> <p>13 A There is a few Tavares, I don't</p> <p>14 know if I knew him specifically.</p> <p>15 Q But when I say do you know him</p> <p>16 -- well, you don't know if you knew him</p> <p>17 specifically. Correct?</p> <p>18 A Correct.</p> <p>19 Q So it's fair to say you didn't</p> <p>20 have any type of personal relationship with him?</p> <p>21 A Like a friendship relationship,</p> <p>22 no.</p> <p>23 Q And as you say, there is a few</p> <p>24 Tavares, so Antonio Tavares doesn't stick out in</p> <p>25 your mind for any reason as knowing him other</p>	<p>1 when he worked for you?</p> <p>2 A His supervisor.</p> <p>3 Q Did you guys ever go out at all?</p> <p>4 A No, not at all.</p> <p>5 Q Not at all? Not after work,</p> <p>6 drinks, nothing like that?</p> <p>7 A I can't remember ever</p> <p>8 socializing with any of my subordinates.</p> <p>9 Q He never came over your house,</p> <p>10 you never went to his house?</p> <p>11 A Absolutely not.</p> <p>12 Q Only relationship you would have</p> <p>13 had with Anthony Matos was he was a prior</p> <p>14 subordinate of yours?</p> <p>15 A Yes.</p> <p>16 Q And did that relationship</p> <p>17 interfere with your ability to conduct this</p> <p>18 investigation fairly and impartially?</p> <p>19 A No.</p> <p>20 Q With regard to your obligations</p> <p>21 as -- at the time as an Internal Affairs</p> <p>22 investigator, are there any procedures in place</p> <p>23 or rules in place which indicate that conflicts</p> <p>24 of interest should be avoided when investigating</p> <p>25 officers?</p>
Page 59	Page 61
<p>1 than being involved in this investigation as you</p> <p>2 sit here today?</p> <p>3 A I have literally had hundreds of</p> <p>4 subordinates working under me. I remember Jose</p> <p>5 Tavares, so if he specifically could have worked</p> <p>6 under me at one time in my career, so I probably</p> <p>7 do know him by face, but not in a personal</p> <p>8 relationship.</p> <p>9 Q Nothing that would have</p> <p>10 interfered with the handling of this</p> <p>11 investigation?</p> <p>12 A No.</p> <p>13 Q What about Anthony Matos, same</p> <p>14 question, did you know him prior to being</p> <p>15 involved in this investigation?</p> <p>16 A He did work for me when I was a</p> <p>17 sergeant and he was a patrolman in the second</p> <p>18 precinct.</p> <p>19 Q How long ago was that?</p> <p>20 A Early 2000, 2001 when I was</p> <p>21 first promoted to sergeant.</p> <p>22 Q Do you recall how long he worked</p> <p>23 for you?</p> <p>24 A No.</p> <p>25 Q What was your relationship like</p>	<p>1 A Yes, you can request the TOT,</p> <p>2 turnover to someone else if it's a personal</p> <p>3 friend of yours.</p> <p>4 Q If it's a personal friend. Are</p> <p>5 there any written orders or directives which</p> <p>6 indicate under certain circumstances, an officer</p> <p>7 should not be involved in an investigation due to</p> <p>8 conflicts? Are there any written procedures in</p> <p>9 place?</p> <p>10 A I believe it's in the Attorney</p> <p>11 General Guidelines in references to policies and</p> <p>12 procedures, usually our general order mimics the</p> <p>13 guidelines but it's definitely in the guidelines.</p> <p>14 Q Under those guidelines, is there</p> <p>15 any provision which indicates that an</p> <p>16 investigating Internal Affairs Officer should not</p> <p>17 be involved in an investigation that concerns one</p> <p>18 of his former subordinates?</p> <p>19 A Not that I am aware of.</p> <p>20 Q But you are not certain whether</p> <p>21 or not that exists?</p> <p>22 A I don't think it exists, I don't</p> <p>23 see why it would exist.</p> <p>24 Q I have one other area I wanted</p> <p>25 to cover with you. You indicated there may have</p>

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<p>1 been a property report by Lieutenant Ballard</p> <p>2 concerning maybe an identification of the</p> <p>3 T-shirt?</p> <p>4 A There should have been if he</p> <p>5 included it.</p> <p>6 Q Would that be in your report?</p> <p>7 A The fact that he did it was. I</p> <p>8 don't know if the actual report was in there.</p> <p>9 Q Excuse me?</p> <p>10 A I don't think the actual report</p> <p>11 was in my investigation, the fact he did it, I</p> <p>12 believe I mentioned in the investigation.</p> <p>13 Q So there was a report?</p> <p>14 A Yeah, I believe I remember</p> <p>15 reading about that.</p> <p>16 Q When did you read that?</p> <p>17 A I reviewed it last night</p> <p>18 quickly.</p> <p>19 MR. DAVENPORT: Alright, no</p> <p>20 further questions.</p> <p>21 MS. BENJAMIN: I have a few.</p> <p>22</p> <p>23 CROSS EXAMINATION BY MS. BENJAMIN:</p> <p>24</p> <p>25 Q Lieutenant, you were asked</p>	<p>1 A It's not logged in there.</p> <p>2 Q When did you check the property</p> <p>3 room looking for the T-shirt?</p> <p>4 A I called personally yesterday.</p> <p>5 Q Did you check it at any time</p> <p>6 before yesterday?</p> <p>7 A No, not personally.</p> <p>8 Q The first time you ever looked</p> <p>9 for the T-shirt was yesterday?</p> <p>10 A In reference to the initial</p> <p>11 investigation or in reference to the deposition</p> <p>12 or me being mentioned as a defendant?</p> <p>13 Q Let me go back and ask you a few</p> <p>14 more questions about the T-shirt. At a certain</p> <p>15 point in time you came into possession of the</p> <p>16 T-shirt?</p> <p>17 A Correct, yes.</p> <p>18 Q That's when it was turned over</p> <p>19 to you while my client was there as with me, his</p> <p>20 mother and my investigator?</p> <p>21 A Correct, yes.</p> <p>22 Q Shortly or sometime after that,</p> <p>23 you sent that T-shirt to the State Police lab for</p> <p>24 purposes of conducting an analysis to see whether</p> <p>25 or not urine was on the T-shirt. Correct?</p>
Page 63	Page 65
<p>1 several questions about the T-shirt in this case.</p> <p>2 Sitting here today, do you have an independent</p> <p>3 recollection of what happened to the T-shirt?</p> <p>4 A No.</p> <p>5 Q Do you recall personally</p> <p>6 throwing away the T-shirt that was involved in</p> <p>7 this case?</p> <p>8 A I would not have thrown it away.</p> <p>9 Q And under normal guidelines,</p> <p>10 when you do these types of investigations, when</p> <p>11 you retain property, what is the normal procedure</p> <p>12 of what is done to that property once your</p> <p>13 investigation is closed?</p> <p>14 A If it can't be returned to the</p> <p>15 owner, if it doesn't pick it up, then it goes to</p> <p>16 the property room.</p> <p>17 MS. BENJAMIN: Thank you. I</p> <p>18 don't have anything else.</p> <p>19</p> <p>20 REDIRECT EXAMINATION BY MR. DAVENPORT:</p> <p>21</p> <p>22 Q You did say you checked the</p> <p>23 property room?</p> <p>24 A Yes.</p> <p>25 Q And the T-shirt was not there?</p>	<p>1 A Yes.</p> <p>2 Q You subsequently received that</p> <p>3 T-shirt back. Correct?</p> <p>4 A Yes.</p> <p>5 Q After you received that T-shirt</p> <p>6 back, when is the first time you became aware</p> <p>7 that the T-shirt was needed for purposes of</p> <p>8 litigation?</p> <p>9 A I think the law department</p> <p>10 called me, it wasn't that long ago, asking me if</p> <p>11 I knew about it.</p> <p>12 Q Approximately how long ago?</p> <p>13 A A month maybe.</p> <p>14 Q Was it this year?</p> <p>15 A I think it was.</p> <p>16 Q So you indicate a month maybe?</p> <p>17 A Probably after you filed, maybe</p> <p>18 that's -- I don't know.</p> <p>19 Q You don't know. Right?</p> <p>20 A No.</p> <p>21 Q But when the law department</p> <p>22 called you looking for the T-shirt, what did you</p> <p>23 do?</p> <p>24 A I told them pretty much the same</p> <p>25 I told you, I thought I gave it back to you but I</p>

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<p>1 thought it went to the property room.</p> <p>2 Q When they called you looking for</p> <p>3 the T-shirt, did you actually look for it?</p> <p>4 A No.</p> <p>5 Q You never looked for it?</p> <p>6 A I was at home.</p> <p>7 Q So you were home?</p> <p>8 MS. BENJAMIN: For the record,</p> <p>9 Lieutenant Marasco is out on disability and has</p> <p>10 been on disability since January.</p> <p>11 Q So you have been out since</p> <p>12 January?</p> <p>13 A Yes.</p> <p>14 Q You are still out?</p> <p>15 A Yes.</p> <p>16 Q So you are just here for</p> <p>17 purposes of this deposition today?</p> <p>18 A Correct.</p> <p>19 Q And that's why you looked for</p> <p>20 the T-shirt yesterday?</p> <p>21 A I called the property room to</p> <p>22 make sure it wasn't there because I knew I would</p> <p>23 be questioned about it.</p> <p>24 Q But you did get a call some time</p> <p>25 prior to yesterday from the law department, even</p>	<p>1 A September of '09.</p> <p>2 Q September of '09 when you left</p> <p>3 Internal Affairs, did you clean your desk out?</p> <p>4 A That desk was clean -- we moved</p> <p>5 from 22 Franklin Street to 16th Avenue. There</p> <p>6 was a move in between.</p> <p>7 Q Where is it now?</p> <p>8 A 247 16th Avenue.</p> <p>9 Q Were you there when that move</p> <p>10 took place?</p> <p>11 A Yes.</p> <p>12 Q You cleaned your desk out?</p> <p>13 A Yes.</p> <p>14 Q And did you come across the</p> <p>15 T-shirt then?</p> <p>16 A No.</p> <p>17 Q You said the T-shirt could have</p> <p>18 been under your desk also?</p> <p>19 A In my file cabinet, it's a</p> <p>20 locked cabinet.</p> <p>21 Q Did you clean out the file</p> <p>22 cabinet?</p> <p>23 A Oh, yeah.</p> <p>24 Q Was the T-shirt there?</p> <p>25 A No.</p>
Page 67	Page 69
<p>1 though you were out on disability inquiring as to</p> <p>2 the status of the T-shirt?</p> <p>3 A Yes.</p> <p>4 Q What was your response?</p> <p>5 A Again, I thought I returned it</p> <p>6 back to you. If I didn't, it should be in the</p> <p>7 property room.</p> <p>8 Q And you don't recall when that</p> <p>9 conversation took place?</p> <p>10 A A month or two ago.</p> <p>11 Q Do you know who called you?</p> <p>12 A I think it was Detective</p> <p>13 Montello (ph).</p> <p>14 Q And when he called you --</p> <p>15 MS. BENJAMIN: She.</p> <p>16 Q When she called you, did you</p> <p>17 make any other efforts whatsoever to locate the</p> <p>18 T-shirt?</p> <p>19 A No.</p> <p>20 Q Did you call anyone in Internal</p> <p>21 Affairs and ask you to look in your desk or</p> <p>22 anything like that?</p> <p>23 A No.</p> <p>24 Q When did you leave Internal</p> <p>25 Affairs?</p>	<p>1 Q You don't recall when the last</p> <p>2 time is you seen this T-shirt?</p> <p>3 A No.</p> <p>4 Q But you did receive it back from</p> <p>5 the police lab?</p> <p>6 A Yes, I did.</p> <p>7 MR. DAVENPORT: No further</p> <p>8 questions.</p> <p>9 MS. BENJAMIN: I don't have</p> <p>10 anything else.</p> <p>11 THE REPORTER: Did anyone want a</p> <p>12 copy of the transcript?</p> <p>13 MR. DAVENPORT: Yes.</p> <p>14 MS. BENJAMIN: No.</p> <p>15 MS. BAGLEY: No.</p> <p>16 (Whereupon, the deposition is</p> <p>17 concluded.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1  
2 CERTIFICATE OF OFFICER  
3

4 I CERTIFY that the foregoing is a true and accurate  
5 transcript of the testimony and proceedings as reported  
6 stenographically by me at the time, place and on the  
7 date as hereinbefore set forth.

8 I DO FURTHER CERTIFY that I am neither a relative nor  
9 employee nor attorney nor counsel of any of the parties  
10 to this action, and that I am neither a relative nor  
11 employee of such attorney or counsel, and that I am not  
12 financially interested in the action.  
13  
14  
15  
16  
17

18 STEPHANIE LYN RAHN

19 Notary Public of the  
20 State of New Jersey

21 My Commission Expires  
22 February 8, 2012  
23  
24  
25



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